

Tentative Rulings for August 8, 2000
Department 72

There are no tentative rulings for the following cases. The parties should appear at the hearing.

592978-1 Garcia v. Duckworth

624128-5 Metivier v. Regents of University of California

635126-6 Johnston v. Garcia

644143-0 Jakob v. Club Sports West, Inc., et al.

654650-1 In re Alfaro

654650-1 Howard v. Goshtigian

(Tentative Rulings begin at next page)

Tentative Ruling

Re: ***Goldsmith v. Butler, et al.***
Superior Court Case No. 651672-8

Hearing Date: August 8, 2000 (Dept. 72)

Motion: Of Defendant Jeff Butler to Change Venue to
Orange County

Tentative Ruling:

To grant the motion. (CCP §§ 395(a), 396b(a), 397, 399.)

The court finds that, for purposes of this motion, the complaint does not contain sufficient allegations to maintain a theory of alter ego. (See ***Meadows v. Emmett & Chandler*** (1950) 99 Cal.App.2d 496; ***Arnold v. Browne*** (1972) 27 Cal.App.3d 386; ***Lebastchi v. Superior Court*** (1995) 33 Cal.App.4th 1465.) Thus, the court considers Butler to be an individual defendant who was not a party to the contract (the subject promissory note). He is therefore entitled to change venue to his county of residence. (CCP § 395(a); ***Meadows v. Emmett & Chandler, supra***; ***Brown v. Superior Court*** (1984) 37 Cal.3d 477.)

The action is to be transferred to Orange County, and plaintiff is to pay the costs of transfer. (CCP §§ 397, 399)

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: ***Honkavaara v. Merrill Lynch, Inc.***
Case No. 651660-3

Hearing Date: August 8th, 2000 (Dept. 72)

Motion: Defendant's Motion to Strike

Tentative Ruling:

To grant the motion to strike as to the portions of the first amended complaint which refer to "Family Law Code Section 5390", with leave to amend. To deny the remainder of the motion to strike.

Plaintiff has cited the incorrect code section in his first amended complaint when he refers to Family Code § 5390. The correct code section is Family Code § 5290. Therefore, the court's tentative ruling is to strike all references to Family Code § 5390. Plaintiff is granted 10 days to file a second amended complaint. All new allegations are to be set in **boldface**.

However, the remainder of the first amended complaint does not appear to be "irrelevant, false, or improper". CCP § 436. The request for damages in the second cause of action is appropriate, since the cause of action is for wrongful termination, and not simply a request for relief under Family Code § 5290. As a result, Plaintiff may request damages under tort and breach of contract theories, as well as relief under Family Code § 5290.

Plaintiff's first amended complaint also states sufficient facts to support a request for punitive damages. Under ***Perkins v. Superior Court*** (1981) 117 Cal.App.3d 1, "What is important is that the complaint as a whole contain sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief. [Citations.] The stricken language must be read not in isolation, but in the context of the facts alleged in the rest of the complaint." *Id.* at 6. . Here, the first amended complaint alleges that defendant acted with the intent to cause injury to plaintiff. (Par. 12.) This is sufficient to constitute malice under CC section 3294 [c][1]. Therefore, Plaintiff's request for punitive damages is not improper.

Nor is the request for attorney's fees improper, since Plaintiff has brought his action under the Fair Employment and Housing Act. Government Code § 12965 specifically gives the court discretion to award attorney's fees in an action brought under FEHA. Plaintiff therefore has the right to request attorney's fees under Government Code § 12965.

Pursuant to CRC 391(a) and CCP § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: ***C&A Fruit, Inc. v. Ito Packing Co., Inc.***
Superior Court Case No. 648319-2

Hearing Date: August 8, 2000 (Dept. 72)

Motion: (1) Motion to Declare Case Complex, and (2) Motion to
Bifurcate Case for Discovery

Tentative Ruling:

First, to grant the Defendants' motion to declare Case No. 648319-2 as a "complex litigation." The request to have this case assigned to one judge for all purposes is denied because there are insufficient judicial resources (judges) to accommodate such an assignment. However, Dept 72, as the civil law and motion department will calendar a "case management conference" (Standards of Judicial Administration, section 19(e)) for September 1, 2000 at 10:00am.

Second, to deny without prejudice the Defendants' motion to "bifurcate" discovery proceedings herein into separate phases. The request is premature. The question of how discovery will be managed in this case is one which should be considered and resolved by the civil law and motion judge following the case management conference.

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court, and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: ***Reinhardt v. Kenworth, Inc., et al.***
Superior Court Case No: 630370-5

Hearing date: August 8, 2000 (Dept. 72)

Motion: For summary judgment

Tentative Ruling:

To grant. Defendant's Sep.Stmt. ## 9-18, 28-33 establish that there was no implied contract to terminate plaintiff's employment only for cause. Plaintiff has not disputed any of defendant's facts or presented additional disputed facts. The statement that plaintiff had a future with defendant is insufficient to establish a contract not to terminate without cause. Kovatch v. California Casualty Management Co. (1998) 65 Cal.App.4th 1256, 1275 [77 Cal.Rptr.2d 217]. The fact that plaintiff gave up other employment to accept the job with defendant does not alter this conclusion. Hillsman v. Sutter Community Hospitals (1984) 153 Cal.App.3d 743 [200 Cal.Rptr. 605]; Camp v. Jeffer, Mangels, Butler & Marmaro (1995) 35 Cal.App.4th 620, 630-631 [41 Cal.Rptr.2d 329]. Where there is no implied contract to terminate only for cause, termination without cause does not violate the covenant of good faith and fair dealing. Gould v. Maryland Sound Industries, Inc. (1995) 31 Cal.App.4th 1137, 1152 [37 Cal.Rptr.2d 718]; Foley v. Interactive Data Corp. (1988) 47 Cal.3d 654, 698 n. 39 [254 Cal.Rptr. 211].

As to the third cause of action, the undisputed conduct of defendant was not outrageous as a matter of law. Defendant's Sep.Stmt. ## 1-18, 63-69, 71 and plaintiff's response thereto. See, Trerice v. Blue Cross of California (1989) 209 Cal.App.3d 878, 883 [257 Cal.Rptr. 338].

The statement that plaintiff had a future with defendant was not an actionable misrepresentation; it was a statement of opinion or a prediction of future events that does not fall within any of the exceptions to the rule that statements of opinion are not actionable. Cohen v. S & S Construction Co. (1983) 151 Cal.App.3d 941, 946 [201 Cal.Rptr. 173]; Borba v. Thomas (1977) 70 Cal.App.3d 144, 153 [138 Cal.Rptr. 565]. Additionally, it is undisputed plaintiff has no evidence that, when defendant made the statement, it was false or made without intent to comply with it. Plaintiff cited no evidence in support of her contention evidence is being hidden from her, and her supporting declaration does not bear out that claim. Defendant's Sep.Stmt. ## 85-114 and plaintiff's response thereto.

The court has considered the objections to evidence made by the parties and has considered only admissible evidence in ruling on this motion. Biljac v. Interstate Bank (1990) 218 Cal.App.3d 1410, 1419.

Pursuant to CRC 391(a) and CCP § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: ***Ito Packing Co., Inc. v. Serian Bros., Inc.***
Superior Court Case No. 574199-6

Hearing Date: August 8, 2000 (Dept. 72)

Motion: By plaintiff/cross defendants to consolidate with cases #648319-2, *C & A Fruit, Inc. v. Ito Packing Co., Inc.*, and case #653786-4, *Egoian v. Ito Packing Co., Inc.*

Tentative Ruling:

To deny. First, in light of the tentative ruling issued today to grant the motion to declare *C & A Fruit, Inc. v. Ito Packing Co., Inc.*, Superior Court Case No. 648319-2 complex, consolidation would remove this case from fast track without a finding that it is complex.

While the issues are similar in all three cases, the factual bases for each grower's claims and the claims of Ito Packing Co., Inc., against each grower are different. For example, because some of the agreements are alleged to be oral, the question of the enforceability of the packing and marketing agreement might not apply to each grower account. Further, questions of duty, fiduciary relationship, laches, statutes of limitations, punitive damages, and how each separate grower account was handled, do not appear to be common questions of fact or law.

Although it appears that the judicial foreclosure complaint would be tried by the court, a jury could still find the remaining issues and facts confusing if the cases were consolidated.

Any benefit to the witnesses provided by consolidation would appear to be illusory, because it appears that the only common witnesses would be persons affiliated with Ito Packing Co., Inc., who presumably would still have to testify separately about each grower, whether the cases are consolidated or not.

It appears that the only issue which might be given preclusive effect would be the interpretation of the packing and marketing agreement. The interpretation of the contract is a question of law for the court (Evid. Code §310(a); *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1285 [87 Cal.Rptr.2d 497, 515]), which would presumably be the same in any of the three cases.

Finally, consolidation would delay the current trial date of October 2, 2000. (Code of Civ. Proc. §1048; *Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.)

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Re: ***Joseph Uremovic, et al. v. Gregory Davis, et al.***
Superior Court Case No. 642982-3

Hearing date: 8-8-00 (Dept. 72)

Motion: 1) demurrer to Eden cross-complaint
2) motion to strike

Tentative Ruling:

To sustain the demurrer with ten days' leave to amend as to the third, fourth, sixth and seventh causes of action; to overrule the demurrer on the first and second causes of action and to deny the motion to strike.

The third cause of action for breach of contract fails to state facts sufficient to constitute a cause of action because Eden does not allege with specificity what Uremovic failed to do as a result of accepting too much other work. The facts constituting breach must be stated with certainty, i.e. the specific acts or conduct. (See generally 4 Witkin, *California Procedure* (4th ed., 1997) Pleading, §495, p. 585.)

The fourth cause of action for breach of contract fails to state facts sufficient to constitute a cause of action because Eden does not allege the essential terms of the agreement, whether the agreement was oral or implied, or its own performance. Incorporating by reference previous paragraphs of the cross-complaint cannot make this cause of action sufficient since all earlier causes of action were based on a different agreement.

The sixth and seventh causes of action for breach of fiduciary duty are uncertain because it is unclear which of the contracts, or both, are at issue. Eden has incorporated by reference all prior allegations, relating to both the Brandt and the Miller settlements.

No further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court, and the time in which the complaint can be amended will run from the date of service by the clerk of the minute order. The time in which the cross-complaint can be amended will run from the date of service by the clerk of the minute order. All new allegations in the first amended complaint are to be set in **boldface** type.

